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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|-------------------------------|
| 10/075,423 | 02/13/2002 | Lawrence G. Reid JR. | 00471/268588 | 7582 |
| 7590 | 08/18/2004 | | | EXAMINER DEMILLE, DANTON D |
| Charles W. Calkins Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101 | | | ART UNIT 3764 | PAPER NUMBER |

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|----------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/075,423 | REID ET AL. |
| | Examiner Danton DeMille | Art Unit 3764 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 13 May 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 3-28 is/are pending in the application.
 4a) Of the above claim(s) 15-20 and 25 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,3-10,12-14,21-24 and 26-28 is/are rejected.
 7) Claim(s) 11 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The disclosure is objected to because of the following informalities: The specification and claims still make reference to trademark ZIPLOC®. It should be capitalized wherever it appears. The proprietary nature of the mark should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. SEE MPEP 608.01(v).

2. Appropriate correction is required.

Claim Objections

3. **Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.** Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The outer, middle and inner layer have already been recited.

Claim Rejections - 35 USC § 103

4. **Claims 1, 3-7, 10, 12, 13, 14, 21-24, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bride-Flynn in view of Francis.**

5. Bride-Flynn teaches a chamber 22 having two walls of material 26 shown in figure 5. A mouth 14 has a ZIPLOC® closure seal 20 fixedly attached to the inside surface of the two walls. An attachment mechanism 32 is fixedly attached to the bag for positioning and holding the chamber in a desired location.

6. Bride-Flynn appears silent with regard to the details of the composition of the chamber however, any conventional material in the art would have been an obvious provision. Francis

teaches the composition of the two walls of a therapeutic bag comprising an inner film 18 of nylon sclair and an outer film 20 of nylon in column 3, lines 3-6. It would have been obvious to one of ordinary skill in the art to modify Bride-Flynn to use the nylon double layer material for the chamber walls as taught by Francis to provide the details of composition of the plastic bag. The resulting bag would have the outer layer of insulating absorbable material 28 and the two layers of the plastic bag of nylon would be the middle and inner layer of the bag. Thereby comprehending the invention as claimed.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above and further in view of Hubbard et al.

8. Hubbard teaches the waterproof bag inner layer 42 is bonded to the outer layers 44 and 46. Bride-Flynn may not teach that the outer layer 28 is bonded to the waterproof bag 26 however, such would have been an obvious provision to make the bag of uniform construction. It would have been obvious to one of ordinary skill in the art to further modify Bride-Flynn to bond the outer layer to the inner layers as taught by Hubbard to make the bag of uniform, integral construction.

Allowable Subject Matter

9. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 3-14, 21-24, 26-28 have been considered but are moot in view of the new ground(s) of rejection.

11. The only difference between claim 1 and Bride-Flynn is the fact that each wall of the bag is composed of three layers with the middle layer being made of nylon. Broadly, a nylon plastic bag even composed of just two layers would broadly comprehend the claim. There appears to be no unobviousness to make the plastic bag made out of nylon. Such is well known as exemplified by Francis.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

ddd
14 August, 2004
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Art Unit 3764